

## § 5.10

less to the Financial Management Service in accordance with the procedures described in 31 CFR 285.12. The Financial Management Service takes appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the collection action to be taken. *See* 31 CFR 285.12(b)(2). Appropriate action includes, but is not limited to, contact with the debtor, referral of the debt to the Treasury Offset Program, private collection agencies or the Department of Justice, reporting of the debt to credit bureaus, and administrative wage garnishment.

(b) At least sixty (60) days prior to transferring a Treasury debt to the Financial Management Service, Treasury entities will send notice to the debtor as required by § 5.4 of this part. Treasury entities will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, Treasury entities will certify their compliance with all applicable due process and other requirements as described in this part and other Federal laws. *See* 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt collection process, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by administrative and tax refund offset. *See* 31 CFR 285.12(g). The Treasury Offset Program is a centralized offset program administered by the Financial Management Service to collect delinquent debts owed to Federal agencies and states (including past-due child support). Under the Treasury Offset Program, before a Federal payment is disbursed, the Financial Management Service compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the Financial Management Service (or, in some cases, another Federal disbursing agency) offsets all or a portion of the Federal payment,

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disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, but are not limited to, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

### § 5.10 How will Treasury entities use administrative offset (offset of non-tax Federal payments) to collect a Treasury debt?

(a) *Centralized administrative offset through the Treasury Offset Program.* (1) In most cases, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by the offset of Federal payments. *See* § 5.9(c) of this part. If not already transferred to the Financial Management Service under § 5.9 of this part, Treasury entities will refer any eligible debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. *See* 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). Treasury entities may refer any eligible debt less than 180 days delinquent to the Treasury Offset Program for offset.

(2) At least sixty (60) days prior to referring a debt to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. Treasury entities will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Treasury entities will certify their compliance with the requirements described in this part.

(b) *Non-centralized administrative offset for Treasury debts.* (1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, Treasury entities may collect past-due, legally enforceable Treasury debts through non-centralized administrative offset. *See* 31 CFR 901.3(c). In these cases, Treasury entities may offset a payment internally or make an offset request directly to a Federal payment agency. If

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the Federal payment agency is another Treasury entity, the Treasury entity making the request shall do so through the Deputy Chief Financial Officer as described in §5.20(c) of this part.

(2) At least thirty (30) days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, Treasury entities will send notice to the debtor in accordance with the requirements of §5.4 of this part. When referring a debt for offset under this paragraph (b), Treasury entities making the request will certify, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Treasury entities will certify their compliance with these regulations concerning administrative offset. *See* 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in §5.4 of this part shall explain to the debtor how to request an administrative review of a Treasury entity's determination that the debtor owes a Treasury debt and how to present evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt, the debtor may seek a review of the terms of repayment. In most cases, Treasury entities will provide the debtor with a "paper hearing" based upon a review of the written record, including documentation provided by the debtor. Treasury entities shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Treasury entity determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although Treasury entities should carefully document all significant matters discussed at the hearing. Treasury entities may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute. Each Treasury entity will have its own poli-

cies and procedures concerning the administrative review process consistent with the FCCS and the regulations in this section.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), Treasury entities may effect an offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in §5.4 of this part, or completing the procedures described in paragraph (b)(2) and (c) of this section. Treasury entities shall give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

### **§5.11 How will Treasury entities use tax refund offset to collect a Treasury debt?**

(a) *Tax refund offset.* In most cases, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by the offset of tax refunds and other Federal payments. *See* §5.9(c) of this part. If not already transferred to the Financial Management Service under §5.9 of this part, Treasury entities will refer to the Treasury Offset Program any past-due, legally enforceable debt for collection by tax refund offset. *See* 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice.* At least sixty (60) days prior to referring a debt to the Treasury Offset Program, Treasury entities will send notice to the debtor in accordance with the requirements of §5.4 of this part. Treasury entities will certify to the Financial Management Service's Treasury Offset Program, in writing, that the debt is past-due and legally enforceable in the amount submitted and that the Treasury entities have made reasonable efforts to obtain payment of the debt as described in 31 CFR 285.2(d). In addition, Treasury entities will certify their compliance with all applicable due process and other requirements described in this part and other Federal laws. *See* 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in §5.4 of this part shall provide the debtor with at least 60 days